

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

HOWARD DRAPER,

Petitioner,

v.

**Civil Action No. 1:05CV22
(Judge Broadwater)**

KEVIN WENDT,

Respondent.

REPORT AND RECOMMENDATION/OPINION

This matter is pending before me for Report and Recommendation pursuant to LR PL P 83.09.

On February 2, 2005, the *pro se* petitioner, Howard Draper, an inmate at FCI-Gilmer, filed an Application for Habeas Corpus pursuant to 28 U.S.C. §2241 asserting that the Bureau of Prisons' method of calculating good conduct time was contrary to 18 U.S.C. §3624(b).

Because the petitioner did not pay the \$5.00 filing fee or file an application to proceed without prepayment of fees, the Court issued a Notice on February 3, 2005, advising him of his deficiency and warning him that failure to pay the filing fee or file an application to proceed without prepayment of fees within 30 days from the file date of the Notice may result in the dismissal of his case without prejudice.

The petitioner has failed to respond to the Court's February 3, 2005 Notice. He has neither paid the \$5.00 filing fee nor filed an application to proceed without prepayment of fees. Consequently, the undersigned recommends that the petition be denied without prejudice.

Any party may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable W. Craig Broadwater, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to provide a copy of this Report and Recommendation/Opinion to the *pro se* petitioner.

DATED: September 4, 2005

/s/ John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE